

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Multi-Association Group (MAG) Plan)	CC Docket No. 00-256
for Regulation of Interstate Services)	
of Non-Price Cap Incumbent Local)	
Exchange Carriers and)	
Interexchange Carriers)	

**REPLY COMMENTS OF THE
COMPETITIVE UNIVERSAL SERVICE COALITION
ON PETITIONS FOR RECONSIDERATION**

**COMPETITIVE UNIVERSAL
SERVICE COALITION**

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The Competitive Universal Service Coalition ("CUSC"), 1/ by its attorneys, hereby replies to the comments filed on the petitions for reconsideration of the Commission's Fourteenth Report & Order ("*Order*") 2/ relating to the Rural Task Force's recommendations in the captioned proceedings. In particular, CUSC urges the Commission to reject the anti-competitive arguments made by the

1/ The Competitive Universal Service Coalition includes the following companies and associations: Association for Local Telecommunications Services; Competitive Telecommunications Association; Dobson Communications Corporation; Nucentrix Broadband Networks, Inc., Personal Communications Industry Association; Smith Bagley, Inc.; U.S. Cellular Corporation; Verizon Wireless; VoiceStream Wireless Corporation; Western Wireless Corporation; and the Wireless Communications Association.

2/ *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report & Order and Twenty-Second Order on Reconsideration in CC Docket No. 96-45 and Report & Order in CC Docket No. 00-256, FCC 01-157 (rel. May 23, 2001) ("*Order*").

National Telephone Cooperative Association (“NTCA”), the United States Telecom Association (“USTA”), and CenturyTel, Inc. (“CenturyTel”).

INTRODUCTION AND SUMMARY

CUSC’s petition for reconsideration demonstrated the need for the Commission to modify the study area disaggregation rules adopted in the RTF Order, in order to adhere to the established principle of competitive neutrality. CUSC asked that the rules be changed to give competitive entrants the same right to initiate disaggregation proceedings as incumbent local exchange carriers (“ILECs”), and to prevent anti-competitive manipulation of the streamlined process for carriers to disaggregate their study areas without regulatory oversight. As shown below, NTCA’s and USTA’s arguments opposing CUSC’s petition are meritless, and the petition should be granted expeditiously.

In addition, certain associations of rural incumbent local exchange carriers (“ILECs”), in an apparent attempt to prevent wireless carriers from ever receiving any universal service support, have challenged the recently adopted billing-address rule for determining customer locations, and have argued that additional burdens should be imposed on wireless carriers. CUSC submits that these proposals should be rejected, and the Commission should reaffirm that mobile wireless carriers that provide the supported services can be designated as eligible telecommunications carriers (“ETCs”).

I. THE STUDY AREA DISAGGREGATION RULES MUST BE COMPETITIVELY NEUTRAL, AS SET FORTH IN CUSC'S PETITION FOR RECONSIDERATION

The Commission should grant CUSC's petition for reconsideration of the study area disaggregation rules, notwithstanding NTCA's and USTA's unsupported arguments in opposition. NTCA and USTA oppose CUSC's proposal to give competitive entrants the same rights to initiate study area disaggregation as ILECs, arguing that, given the "different characteristics and operating environments" faced by different rural carriers and the fact that many of them serve very small and remote customer bases, [m]andatory disaggregation at a competitor's discretion . . . should be rejected." 3/ But the determination of whether or not a study area should be disaggregated has profound consequences for new entrants as well as for incumbents. No justification has been provided for the current rules, which give the ILECs unfettered discretion, and gives competitive carriers virtually no input, on this important matter. To adhere to the principle of competitive neutrality, the Commission should grant CUSC's petition for reconsideration in this regard.

Second, NTCA provides no justification for its opposition to CUSC's request that the FCC adopt strict and specific rules governing how the amounts of funding in each sub-zone are calculated in the context of self-certified ILEC

3/ USTA Comments at 4; NTCA Comments at 7.

disaggregation proposals, to ensure amounts are cost justified. ^{4/} NTCA merely recites that “state commission oversight of carrier disaggregation plans will safeguard against anti-competitive manipulation.” ^{5/} This is beside the point; *self-certified* plans take effect *without* state commission oversight. If there is to be a self-certified option with no state oversight, then controls against anti-competitive manipulation, such as the specific requirements sought by CUSC, are critical.

Third, while NTCA supports disaggregating study areas (at the ILEC’s option) for purposes of disbursing funding, NTCA submits that study areas should never be disaggregated for purposes of designating ETCs, and contends that such disaggregation would violate Section 214(e) and would be “an invitation for competitors to cherry pick customers in the incumbent’s study area.” ^{6/} But the statute and the FCC’s rules permit study area disaggregation under certain circumstances, ^{7/} and CUSC has shown that disaggregation is often necessary to enable wireless carriers and other new entrants to compete. ^{8/} For example, rural ILECs’ study areas do not necessary correspond with the geographic areas that

^{4/} NTCA Comments at 7; *see also* CUSC Petition for Reconsideration at 11-12.

^{5/} NTCA Comments at 8.

^{6/} *Id.* at 6-7.

^{7/} *See* 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207. *See also Ex Parte* Letter from David L. Sieradzki, Counsel for CUSC, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 96-45 (Apr. 11, 2001) (transmitting proposed revisions to 47 C.F.R. § 54.207 to make it competitively neutral).

^{8/} CUSC Petition for Reconsideration at 9-10.

wireless carriers are licensed to serve. Moreover, there is no evidence that competitive carriers that have received ETC designation have ever engaged in cherry picking (*i.e.*, improperly serving only the most profitable segment of customers), and the FCC and state commissions have ample means to prevent improper conduct other than imposing blanket rules that would foreclose competitive entry.

Most fundamentally, providing different amounts of per-line funding to different portions of a study area is meaningless unless it is accompanied by disaggregation for purposes of ETC designation. If the ILEC is the only carrier to serve an area, then it makes no sense to provide different amounts of funding to different subdivisions of the study area, since the total amount that the carrier would receive would not be affected. Similarly, if both the ILEC and the competitive ETC serve (and are required to serve) the entire geographic area, then there is no public policy reason to provide different amounts of funding to different portions of the study area – although, absent regulatory oversight, an incumbent could manipulate the funding amounts to the disadvantage of the competitive entrant. However, if the ILEC serves, for example, two counties in a study area, and a prospective competitive entrant is able to serve only one of those counties due, for example, to licensing limitations, then disaggregation of the study area for ETC designation purposes is critical to facilitate competitive entry. Only in such a case does disaggregation for purposes of computing the amount of funding, subject to appropriate regulatory controls, become necessary and appropriate, to ensure both

that universal service is supported in each of the areas at an appropriate level and to ensure that universal service support creates a level playing field and neither over-stimulates nor represses competition. ^{9/} Thus, the Commission should modify its rules to reflect the critical need to link study area disaggregation for funding purposes with study area disaggregation for ETC designation purposes.

II. THE COMMISSION SHOULD AFFIRM THE USE OF BILLING ADDRESSES TO DETERMINE THE LOCATION OF WIRELESS CARRIERS' CUSTOMERS

CUSC, in its comments on the petitions for reconsideration, urged the Commission to reject the petition for reconsideration of the Coalition of Rural Telephone Companies ("CRTC") because it consisted of little more than thinly veiled anti-competitive objections to wireless carriers qualifying as eligible telecommunications carriers ("ETCs"). ^{10/} The same arguments apply to CenturyTel's and NTCA's arguments in support of CRTC's petition. ^{11/} In particular, CUSC has already responded to CRTC's groundless argument, repeated by NTCA, that the Commission should abandon funding portability and provide competitive ETCs only support based on their own costs, rather than the identical per-line amount of support received by the ILECs. ^{12/}

^{9/} See generally CUSC Reply Comments, CC Docket No. 96-45, at 6-10 (filed Dec. 11, 2000).

^{10/} CUSC Comments at 3-10.

^{11/} CenturyTel Comments at 6-8; NTCA Comments at 8-9.

^{12/} Compare NTCA Comments at 9 with CUSC Comments at 8-9.

In its comments opposing CRTC's petition, CUSC demonstrated that there is no basis to grant CRTC's request for reconsideration of the rule requiring wireless mobile carriers to use billing addresses to determine where their customers are located for purposes of receiving high-cost universal service support. ^{13/} CRTC's position, and CenturyTel's and NTCA's arguments in support of it, essentially challenge whether a mobile wireless carrier can ever qualify as an ETC. ^{14/} But the same arguments were considered and rejected long ago by the Commission, which established (and subsequently reaffirmed) that mobile wireless telecommunications service providers can satisfy the ETC criteria ^{15/}

As such, the Commission must reject CenturyTel's proposal that wireless ETCs should "monitor customer usage" and "reclassif[y] as ineligible for universal service support" those who "exceed prescribed out-of-area usage limits." ^{16/} CenturyTel, like CRTC, seems to be arguing that mobile wireless customers may not really be located at their primary billing address, because there

^{13/} CUSC Comments at 6-8.

^{14/} "CRTC's position basically amounts to the claim that, because wireless customers are mobile, there is no way to determine whether the service provided to them in high-cost areas qualifies as 'universal service.' The net result of this position, however, would be that unless wireless providers somehow demonstrate that their customers use their service either exclusively or predominantly in an area for which USF support is needed, the wireless carrier cannot qualify as an ETC." *Id.* at 6.

^{15/} *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 145 (1997); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Seventh Report & Order And Thirteenth Order On Reconsideration and Further Notice Of Proposed Rulemaking, 14 FCC Rcd 8078, ¶ 72 (1999).

^{16/} CenturyTel Comments at 8.

is a possibility they could “roam,” or use their wireless phones in a different location. However, just as wireless carriers’ customers can use their services for both supported and non-supported services, so can ILEC customers. ILEC customers can use their phones for services such as dial-up or xDSL Internet access, and wireless customers can use theirs for roaming outside the “home” service area, Internet access, and other services. 17/

Certainly it would make no sense to require ILECs to monitor how much of their customers’ phone usage is spent on Internet access or other non-supported services, and to reduce the amount of universal service support they receive accordingly. For the same reason, CenturyTel’s proposal to require wireless ETCs to track customer usage of non-supported functionalities, such as mobility, should be rejected. To require wireless carriers, but not ILECs, to engage in such a costly and difficult tracking effort would profoundly violate competitive neutrality and would put mobile wireless ETCs at a significant competitive disadvantage.

CenturyTel appears to be concerned about the possibility that a wireless customer whose home address is in a high-cost area might “roam” to lower cost areas, where less universal service funding is available. 18/ But customers often use their wireless phones for “roaming” in high-cost locations, such as when they drive along highways through remote, rural areas. It is just as likely that the

17/ CUSC Comments at 6-7 n.8.

18/ CenturyTel Comments at 7.

universal service funding received by wireless carriers would have to be *increased* to reflect the time that their customers spend “roaming” in areas where greater amounts of funding are provided than in the customers’ home areas, if CenturyTel’s approach were adopted. But this approach would be administratively unworkable and arguably might even put non-mobile carriers at an unfair disadvantage.

In sum, there is no need to adopt even more special FCC rules, applicable only to wireless ETCs, to deal with the fact that some wireless universal service customers will also take advantage of the mobility aspect of their service. To the contrary, as long as each carrier provides the minimum supported services, customers in high-cost areas should be able to select among multiple carriers, each of which offers a different package of non-supported as well as supported services. In that context, the billing-address rule adopted by the Commission is clearly appropriate to achieving competitive and technological neutrality for universal service support in rural telephone company service areas. The rule correctly recognizes that in most cases a customer’s billing address will coincide with the subscriber’s home or business location, where the subscriber can use the service in the same manner as ILEC-provided universal service. Moreover, as the Commission recognized, “enforcement mechanisms can be used to detect and prevent improper arbitrage.” 19/

19/ Order, ¶ 183.

CONCLUSION

For the foregoing reasons, and those set forth in CUSC's earlier filings in this docket, the FCC should grant CUSC's Petition for Reconsideration and should deny the Petition for Reconsideration filed by CRTC.

Respectfully submitted,

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